

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13358 OF 2019

Nanasaheb Babasaheb Dharbale
and others

.. Petitioners

Versus

1. The State of Maharashtra and others .. Respondents

Shri Pushkar S. Shendurnikar, Advocate for Petitioners.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 3.
Shri C. V. Dharurkar, Advocate for the Respondent No. 2.
Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 4.
Shri A. M. Karad, Advocate for the Respondent No. 5.
The Respondent No. 6 is served.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

CLOSED FOR ORDERS ON : 12.10.2021

ORDER PRONOUNCED ON : 26.11.2021

FINAL ORDER (*Per S. V. Gangapurwala, J.*) :-

. The petition is filed with the following reliefs.

“A. The Hon’ble High Court may kindly be pleased to issue the writ of mandamus or any other appropriate writ, order or direction and thereby direct the Respondent No. 1 to takeover the Management of the Respondent Nos. 5 and 6 in the interest of the students and the staff.

B. The Hon'ble High Court may kindly be pleased to issue the writ of mandamus or any other appropriate writ, order or direction and thereby direct the Respondent Nos. 1, 2 and 4 to take the necessary steps for the transfer of the Management to any other competent persons as may be deemed fit by the Hon'ble High Court.

C. The Hon'ble High Court may kindly be pleased to issue the writ of mandamus or any other appropriate writ, order or directions and thereby direct the Respondent Nos. 1 and 2 to take the necessary steps for the appointment of the Administrator over the Respondent Nos. 5 & 6 and may further be please to direct him to take the necessary steps to cure the deficiencies pointed out by the Respondent No. 2 in the interest of the students and the staff.

D. The Hon'ble High Court may kindly be pleased to issue the writ of mandamus or any other appropriate writ, order or direction and thereby direct the Respondent No. 5 to take the necessary steps for the closure of the college in accordance with Section 121 of the Maharashtra Public Universities Act, 2016 and may further direct the Respondent No. 4 to initiate the necessary steps for the college.

E. The Hon'ble High Court may kindly be pleased to issue the appropriate writ, order or direction and direct the Management of the Respondent Nos. 5 and 6 to deposit the retrenchment compensation of Rs. 2 Crores each for the members of the teaching staff and Rs. 1 Crore each to the non-teaching staff under the heading of retrenchment compensation.

F. The Hon'ble High Court may kindly be pleased to issue the appropriate writ, order or direction and thereby direct the Respondent Nos. 5 and 6 to pay the regular salary of the petitioners as per the norms prescribed by the AICTE and the State Government from time to time."

2. Subsequently the writ petition is amended and prayer clause F-1 was added, which reads as under :

"F-1 The Hon'ble High Court may kindly be pleased to issue the appropriate writ, order or direction and thereby quash and set aside the impugned Relieving Letters/orders dated 04.07.2020 issued by the Respondent No. 5 against the petitioner Nos. 8, 9, 10, 11, 17, 20, 22, 23, 24 and 25."

3. Mr. Shendurnikar, the learned counsel for petitioners submits that, the present petitioners are members of the teaching and non teaching staff of Bhagwan College of Pharmacy, Aurangabad. They have put in service of almost 19 to 20 years while discharging their academic and administrative duties. On or about 16.04.2018 the Expert Visiting Committee (EVC) of the All India Council for Technical Education (for short "AICTE") visited the respondent No. 6 college and submitted its report pointing out the deficiencies. A show cause notice was also issued to the college. Considering the deficiencies on 30th April, 2018, the AICTE placed the respondent No. 6/college in no admission category. The management of the respondent No. 6/college did not make any efforts to cure the deficiencies pointed

out by the Expert Visiting Committee in its report dated 16.04.2018. The petitioner Nos. 1 to 7 filed Writ Petition No. 5150 of 2013 alleging inaction on the part of the management of the respondent No. 6 to extend the benefit of the revised pay scale approved by the 06th Pay Commission to the petitioners. The Writ Petition No. 5150 of 2013 was allowed by this Court under judgment and order dated 15.01.2018 and issued directions to extend the benefit of 06th Pay Commission to the petitioners within three months. Special Leave Petition filed by the management was dismissed by the Apex Court. In spite of positive directions by this Court to extend the benefits of 06th Pay Commission, the management did not take steps to make payment of arrears of salary or even payment of regular salary.

4. The learned counsel further submits that, the management of the respondent No. 6/college is legally and morally bound as per the provisions of the All India Council of Technical Education Act, provisions of the Maharashtra Public Universities Act, 2016 and the guidelines issued by the approval process handbook to cure the deficiencies mentioned by Expert Visiting Committee in its report dated 16.04.2018 and to implement the directions issued by this Court for payment of salary as per the relevant Pay Commission. The learned counsel further submits that, for the inaction on the part of the management of respondent No. 6, the institution is placed in no admission category. The AICTE was pleased to remove the affiliation of the college by virtue of order dated 14.09.2018 thereby the fate of entire students including teaching and non teaching staff is put in jeopardy.

Feeling aggrieved by the order dated 14.09.2018 passed by the AICTE withdrawing affiliation of the respondent No. 6 college, the students preferred Writ Petition No. 11064 of 2018. The teaching and non teaching staff of the college also filed Writ Petition No. 12095 of 2018 before this Court. During the pendency of said writ petitions it was intimated to the High Court by AICTE that considering interest of the students and the members of the staff order of withdrawing affiliation dated 14.09.2018 was itself reviewed. Under the circumstances, High Court was pleased to dispose of the Writ Petition No. 11064 of 2018 under order dated 02.05.2019. The learned counsel submits that, considering the inaction on the part of the management and the disinterest shown in running the college of Pharmacy, in the interest of the students and the members of the teaching and non teaching staff, the respondent No. 1 ought to have taken over the management of the respondent Nos. 5 and 6. The learned counsel to buttress his submissions relies upon the provisions of the Section 3 of the Maharashtra Educational Institutes (Management) Act 1976. According to the learned counsel, it is duty of the Government and its authorities to take over the management in such contingencies.

5. The learned counsel further submits that, during the pendency of the present writ petition, a statement was made that the petitioner Nos. 8, 9, 10, 11, 17, 20, 22, 23, 24 and 25 are relieved by the management under the garb that AICTE has passed order dated 30th April, 2018 placing the college into no admission category. The said action is malafide one. Said

relieving orders are issued without extending opportunity of hearing to those petitioners. The same is illegal. The action of the management in not removing the deficiencies is essentially motivated to avoid the filing of the proposal to move the university U/Sec. 121 of the Maharashtra Public Universities Act for closure of the college. The State Government be directed to take over the management resorting to Section 3 of the Maharashtra Educational Institutions (Management) Act, 1976 (for short "Act of 1976") or the management be transferred to any other competent person. The relieving orders be set aside.

6. The learned Assistant Government Pleader for respondent Nos. 1 and 3 submits that, the administrative and financial matters like appointment of staff, payment of salary and allowances, service matters of staff, etc. are under the purview of the respondent No. 5/management. The respondent No. 5/management is running the respondent No. 6/college and is not under the purview of respondent Nos. 1 and 3 in view of the Government Resolution dated 21.05.1983. The said G. R. deals with opening of new technical and technological colleges on no grant-in aid pattern. It is not for the State of Maharashtra or the Joint Director of Technical Education to interfere into administrative and/or financial matters of respondent Nos. 5 and 6. Grant of approval to new institutes, extension of approvals to the courses conducted by the institutes and decide their intake capacity, closure of institutions are exclusively under purview of the respondent No. 2/AICTE. The AICTE has placed the respondent No. 6 in no admission category under order dated 30th

April, 2018 and under order dated 14.09.2018 had withdrawn the approval of the respondent No. 6/institute. During the course of hearing of Writ Petition No. 11064 of 2018 filed by the students, the Court has recorded in its order dated 18th April, 2019 that the management is willing to remove the deficiencies and to run the college if the order regarding withdrawal of approval is processed and withdrawn by the AICTE and affiliation was also reviewed. The respondent No. 6 is a private permanently unaided institute and as such the respondent No. 1/State of Maharashtra or the respondent No. 3/Director of Technical Education cannot interfere with the administration and financial matters of the institute. The respondent No. 6/college has to decide whether to continue to run the institute by applying to AICTE. Starting/closing of educational institute is prerogative of the management. The respondent No. 1/State of Maharashtra and the respondent No. 3 i. e. Joint Director of Technical Education, Aurangabad Region do not find it expedient in the public interest to take action as per the provisions of Section 3 of the Act of 1976 of taking over the management.

7. Mr. Karad, the learned counsel for respondent Nos. 5 and 6 submits that, the petition is not maintainable for the reliefs claimed. The learned counsel submits that, as per the order dated 02.11.2018 passed in Writ Petition No. 12095 of 2018, the management took all possible steps for completing the education of the students admitted with it, though it was kept under no admission category. As the respondent No. 6 was placed under no admission category from the academic year 2018-2019, not a

single student is admitted since the academic year 2018-2019 in the first year. The teaching staff that was not approved by the university and the non teaching staff placed on record were issued the relieving letters. It was specifically mentioned that as the college was put in no admission category and there was no admission since 2018-2019 the strength of students is reduced. The only source of income to pay salary of teaching and non teaching staff is to recover the fees from the students. As the strength of students is reduced, the management and the respondent No. 6 are left with no other alternative than to issue the relieving letters in accordance with the service rules of the trust. Same is an independent action and cannot be mixed with the prayers of the original writ petition. The learned counsel further submits that, the respondents have taken steps to remove the deficiencies in the pharmacy college run by the respondent No. 5. The deficiencies pointed out by the AICTE have been explained in detail. The deficiencies are removed. They do not exist. The respondent Nos. 5 and 6 also filed writ petition challenging the order placing the respondent No. 6 in no admission category. The same is pending. It is inappropriate on the part of the petitioners to suggest that management is not taking any steps to remove the deficiencies. According to the learned counsel the provisions of the Act of 1976 cannot be invoked. No such circumstance exists.

8. The State cannot decide policy under the AICTE Act. It is for the AICTE to consider the same and not for the State Government or the University to consider the short comings.

Reliance is placed on the judgment of the Apex Court in a case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others reported in *(2006) 9 SCC 1*.

9. Mr. Shendurnikar, the learned counsel for petitioners relies on the judgment of the Apex Court in a case of K. Krishnamacharyulu and others Vs. Sri Venkateshwara Hindu College of Engineering and another reported in *AIR 1998 SC 295* to buttress his submission that the writ petition is maintainable even against institute not receiving grant in aid. There is interest created by the Government in an institution to impart education, which is a fundamental right of the citizens. The teachers who teach and education standards get an element of public interest in the performance of their duties. They are entitled to parity with the Government employees in respect of pay scales also.

10. We have considered the submissions canvassed by the learned advocate for respective parties.

11. The Division Bench of this Court on November 05, 2020, recorded following statement in its order.

1. Petition has been moved contending that petitioners No.8 to 11, 17, 20, 22 and 23 to 25 have been given relieving orders and rest of the petitioners also are posed with threat of similar nature.

2. Mr. A. M. Karad, learned counsel for respondent No.5, on instructions, states that there are eight persons working, looking at the strength of students, whereas contention of

Mr.Shendurnikar, learned counsel for the petitioners is that rest of the petitioners have yet not been served with relieving order.

3. In the circumstances, status-quo, as on the date be maintained.

12. On 06th April, 2021, the Division Bench of this Court made following observations.

. Heard Mr. Shendurnikar learned counsel for the petitioners and Mr. Karad, learned counsel for the respondent nos. 5 and 6.

2. One of the principal prayers made in the writ petition is for a direction to respondent no.1 to take over the management of respondent nos.5 and 6 college in the interest of students, faculty and staff.

3. Prima facie, we find that because of persistent default by respondent nos.5 and 6 to remove the deficiencies pointed out by the All India Council for Technical Education (AICTE), respondent nos.5 and 6 have been put in the no admission category. There appears to be no improvement in the situation. In such circumstances, we are of the view that stand of respondent nos.1 and 3 would be very crucial for deciding the matter one way or the other. In this connection learned counsel for the petitioners has referred to Section 3 of the Maharashtra Educational Institutions (Management) Act, 1976.

4. Since the matter pertains to an educational institution involving the future of students, faculty and staff, we direct respondent nos.1 and 3 to make their stand clear in the matter by filing an affidavit within two weeks from today.

13. In the present case, *prima dona* contention of the petitioners appears to be that because of malfeasance on the part of the management and the institution i. e. respondent Nos. 5 and 6, the institute is placed in no admission category. No steps are taken to remove the deficiencies, as such the management

may be taken over as contemplated U/Sec. 3 of the Act of 1976 and that the authorities be directed to take steps for closure of the college in accordance with the provisions of Section 121 of the Maharashtra Public Universities Act, 2016. The petitioners also seek directions against respondent Nos. 5 and 6 to deposit the retrenchment compensation of Rs. Two crores each for the members of the teaching staff and Rs. One crore each for the members of non teaching staff and to pay the regular salary.

14. It is not a matter of debate that the respondent No. 6/college is placed in no admission category. The writ petition is filed by the respondent Nos. 5 and 6 against the order of placing the respondent No. 6 in no admission category after prolonged delay. The same appears to be pending. The fact remains that no fresh admissions are entertained in respect of the respondent No. 6 college since academic year 2018-2019. It is for the management to remove the deficiencies pointed out by the Expert Visiting Committee of the AICTE. The institution, it appears was not serious enough. Section 3 of the Act of 1976 mandates that, whenever the director is satisfied that the management of any educational institution has neglected to perform any of the duties imposed on it by or under any law for the time being in force, or the memorandum of association or any instrument which regulates its administration or is being managed in a manner detrimental to public interest, and that it is expedient in the public interest and in particular, in the interest of education imparted in such institution to take over the management of such institution in so far as its activity

relates to imparting education, he may, notwithstanding anything contained in any law for the time being in force, after giving the management of such institution, a reasonable opportunity of showing cause against the proposed action, by an order take over the management of such institution in so far as its activity relates to imparting education specified in the order for a limited period not exceeding three years.

15. The educational institution or the institution is defined U/Sec. 2(f) of the Act of 1976. It means a school, a college or any institution by whatever name called the Management of which carries on the activity of imparting education therein. The respondent No. 5 is a management in activity of imparting education through the respondent No. 6/college.

16. The Apex Court in a case of K. Krishnamacharyulu and others Vs. Sri Venkateshwara Hindu College of Engineering and another (*supra*) has observed that, the State has obligation to provide facilities and opportunities to the people to avail right of education. The private institutions cater to the needs of the educational opportunities. The teachers who teach the education get an element of public interest in the performance of their duties. In an institution imparting education public interest is involved. The Act of 1976 does not make a distinction between a grant in aid institution or a non grant in aid institution. The Act of 1976 is brought with a avowed object of putting a check over the institutions not functioning in accordance with the rules and in deserving case to take over the management of the educational

activity. Section 3 of the Act of 1976 is unambiguous. The procedure is also prescribed.

17. Since the year 2018-2019, the institution is in no admission category. Except belated filing writ petition no further steps seem to have been taken by the management by representing before the AICTE or the Institute of Pharmacy of the steps undertaken and a request to bring the institute in admission category. It would appear that, the management of the respondent No. 6/college has neglected to perform the duties imposed on it. In such a scenario, it was utterly inappropriate for the Director to file an affidavit that as the management is not imparting education to the students and that students were also transferred to other institution, the respondent Nos. 1 and 3 do not find it expedient to invoke the provisions of Section 3 of the Act of 1976. It was also insensitive and irresponsible statement on the part of the Incharge Joint Director of Technical Education, Aurangabad Region on affidavit that not obtaining approval of the apex body to run a course may not be treated as negligence to perform any of the duties imposed on the management under any law or the memorandum of association of that society as mentioned in Section 3(1) of the Act of 1976 or that it cannot be said that institution is being managed in a manner detrimental to public interest. We fail to understand that if the following acts (1) members of the teaching and non teaching staff have to come to the Court for redressal of grievance for non payment of applicable pay scale, the Court requiring to issue positive directions against the management to make the payment after

coming to the conclusion that management has failed to make the payment as per the applicable pay scale. The SLP filed by the management is dismissed. (2) The respondent No. 6/college being placed in no admission category. (3) Subsequently, the affiliation is withdrawn by the AICTE. In the writ petition filed by the students a statement was required to be made by the AICTE that keeping interest of the students order of withdrawing affiliation has been withdrawn. (4) No student has been admitted after 2018-2019, if are not detrimental to the public interest and interest of education, as per the affidavit filed by the Incharge Joint Director of Education then is required to explain according to him, what would constitute act of negligence or managing the institution in a manner detrimental to the public interest and detrimental to the education. The Director of Technical Education is a responsible person. He is to be sensitive to the issue and cannot in a casual manner file an affidavit shirking the responsibility imposed upon him U/Sec. 3 of the Act of 1976.

18. Though the affidavit is subsequently filed by respondent Nos. 5 and 6 to state that they have removed deficiencies and that they have also filed writ petition challenging the same. However, the said affidavit seems to have been filed only on 21st August, 2021. The writ petition is also filed challenging the order placing the respondent No. 6/college in no admission category much belatedly.

19. There was no reason for the respondent No. 3 not to invoke

the provisions of Section 3 of the Act of 1976 and to commence the process. Naturally, it could not have taken decision unless the show cause notice was issued to the institution and further action can be taken only if he is not satisfied with the reply given. However, the respondent No. 3 did not even venture to look into and ignore Section 3 of the Act of 1976 absolutely. On the contrary, had made a blatant irresponsible statement in the affidavit that the acts complained of are not detrimental to the public interest or in the interest of the education.

20. The respondent No. 3 could have issued show cause notice, sought for reply and further decision would depend on his satisfaction/non satisfaction upon the reply given by the management/institution.

21. In the light of the above, we direct the respondent No. 3 to proceed as per the provisions of Section 3 of the Act of 1976 and issue show cause notice expeditiously and preferably within a period of one month from today. The respondent Nos. 5 and 6 shall be entitled to file reply along with all the attending documents. The respondent No. 3, naturally would be required to consider the reply filed along with documents, if any, and after considering the reply to the show cause notice form an opinion for himself to take over the management in so far as its activity relating to imparting the education or otherwise.

22. As far as relieving orders are concerned, the petitioners may avail the alternate remedy as may be available. Naturally,

the respondent Nos. 5 and 6 are required to pay regular salary to the petitioners in service and they shall make the payment of regular salary to the petitioners in service regularly as per the applicable pay scale.

23. The writ petition accordingly is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 21